

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 THOMAS W.S. RICHEY,

9 Plaintiff,

10 v.

11 D. DAHNE,

12 Defendant.

CASE NO. C12-5060 BHS

ORDER GRANTING
DEFENDANT'S MOTION IN
PART AND REQUESTING JOINT
STATUS REPORT REGARDING
AN EVIDENTIARY HEARING

13 This matter comes before the Court on Defendant D. Dahne's ("Dahne") motion
14 for relief from an order and/or motion for involuntary dismissal. Dkt. 94. The Court has
15 considered the pleadings filed in support of and in opposition to the motion and the
16 remainder of the file and hereby grants the motion in part for the reasons stated herein.

17 **I. PROCEDURAL AND FACTUAL BACKGROUND**

18 This matter has a long procedural history. In relevant part, Richey has a remaining
19 claim against Dahne for violation of his First Amendment right to petition the
20 government. The Court granted summary judgment on this claim as to liability, Dkt. 74,
21 and the Ninth Circuit affirmed, Dkt. 81. The claim is based on Dahne refusing to accept
22

1 Richey's grievance because it "included rude comments about the guard's weight,
2 including describing her as 'extremely obese.'" *Id.* at 1–2.

3 On May 30, 2019, Dahne filed the instant motion seeking relief from the grant of
4 summary judgment and dismissal of Richey's complaint based on allegations of Richey
5 committing a fraud upon the Court. Dkt. 94. While inspecting Richey's outgoing mail,
6 staff found a letter Richey wrote to his wife in which he states as follows:

7 And just remember, this lawsuit was a creation of a setup. I had the idea to
8 do it based on an old case law and made the content of the grievance up.
9 There never was an "extremely obese female Hispanic guard" who denied
me a shower. All fabricated. And it made it all the way to the US Supreme
Court. Amazing.

10 Dkt. 95-1 at 2–3. This statement appears to directly contradict declarations Richey
11 submitted to the Court under penalty of perjury. *See* Dkts. 4, 47. On June 11, 2019,
12 Richey responded asserting that "he made a false statement in an effort to bait and
13 antagonize the staff who were withholding and presumably monitoring his mail." Dkt.
14 97. On June 21, 2019, Dahne replied and submitted facts in support of his position that
15 Richey's explanation is implausible. Dkt. 98. Dahne contends that mailroom staff did
16 not withhold any of Richey's outgoing mail and therefore Richey would have no reason
17 to bait the mailroom staff. *Id.* at 3.

18 II. DISCUSSION

19 "[C]ourts have inherent power to dismiss an action when a party has willfully
20 deceived the court and engaged in conduct utterly inconsistent with the orderly
21 administration of justice." *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir.
22 1983) (citing *Phoceene Sous-Marine, S.A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 806

1 (9th Cir. 1982). “When necessary, the district court may hold an evidentiary hearing on a
2 motion for sanctions. Indeed, that method best determines the appropriate sanctions while
3 protecting a party’s due process rights.” *Id.* at 592.

4 In this case, the parties have created a genuine factual dispute whether Richey
5 willfully deceived the Court. To resolve the dispute, the Court will hold an evidentiary
6 hearing. The parties shall meet and confer regarding an appropriate date for such a
7 hearing. If Richey seeks to attend the hearing in person instead of via a video link, he
8 shall file a motion for habeas corpus ad testificandum.

9 **III. ORDER**

10 Therefore, it is hereby **ORDERED** that Dahne’s motion for relief from an order
11 and/or motion for involuntary dismissal, Dkt. 94, is **GRANTED in part** and the parties
12 shall file a joint status report regarding an appropriate date for an evidentiary hearing.
13 The Clerk shall remove the motion from the active calendar to be renoted for the date of
14 the hearing once a date is set.

15 Dated this 18th day of July, 2019.

16
17 

18 **BENJAMIN H. SETTLE**
United States District Judge
19
20
21
22